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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,997	07/11/2003	Lawrence D. Brill	60130-1627;02MRA0559	4248

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EXAMINER

BOLTON, TARA L

ART UNIT	PAPER NUMBER
3681	

DATE MAILED: 08/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/617,997

Applicant(s)

BRILL ET AL.

Examiner

Tara L. Bolton

Art Unit

3681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This application has been reviewed. Original claims 1-15 are pending. The rejections cited are as stated below:

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "said web members" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Riise (U.S. Patent No. 1,824,793).

Claim 1, Riise discloses an axle housing (element 1) supporting a rotating shaft (elements 15, 20) and having a web member (element 35) defining a lubricant containment chamber, shown in Fig. 1.

Claims 2 and 12, Riise discloses a drive assembly within the lubricant containment chamber as seen in Fig. 1.

Claim 3 and 13, Riise's invention shows the shaft (element 15) extends through the web member (element 35).

Claims 5 and 6, Riise's invention consists of two lubricant containment chambers at distal ends of the axle housing, Fig. 1 shows one chamber on one side of the rear axle and a mirror image would show the other chamber on the other side of the rear axle.

Claim 8, Riise discloses the axle assembly rotating about one axis, about shaft 15, and a wheel hub rotating about a second axis, about shaft 20, wherein the two shafts are spaced apart as shown in Fig. 1.

Claim 9, Riise discloses a wheel hub (element 9) driven by shaft 20.

Claim 10, Riise's axle housing discloses a lubricant containment cavity bounded by elements 1, 5, 9, and 35 around a drive assembly.

Claim 11, Riise discloses an axle housing (element 1) defining an internal chamber supporting a rotating shaft (element 15) and a web member (element 35) within the chamber restricting flow of oil from one extremity to the other of the axle housing.

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Claim 15, Riise's invention consists of two webbed members (the first shown for in Fig. 1, element 35, and the second being on the other side of the axle housing, being a mirror image of the figure shown) which act as a dam to prevent the complete flow of oil to distal ends of the chamber (page 2, lines 94-99).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. Claims 4 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riise in view of Haluda (U.S. Patent No. 3,887,037).

Riise's axle housing lacks a teaching of a shaft seal to prevent lubricant leakage. However, Haluda teaches an axle housing comprising of an output shaft projecting through a lubricant reservoir wherein the shaft is in substantial sealing relationship with the reservoir (column 10, lines 25-26).

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Therefore, it would have been obvious to one of ordinary skilled in the art at the time the applicant's invention was made to modify the teachings of Riise to include a shaft seal as taught by Haluda because it would prevent the escape of lubricant from the reservoir (column 5, lines 49-51).

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Riise in view of Martin (U.S. Patent No. 5,257,962).

Riise's axle housing fails to explicitly teach a middle section of the housing between web members wherein the middle section does not contain lubricant. However, Martin teaches a sealed transfer assembly (Fig. 4, element 16) that does not contain lubricant.

Therefore, it would have been obvious to one of ordinary skilled in the art at the time the applicant's invention was made to modify the teachings of Riise to include a middle section, not containing lubricant, as taught by Martin because the middle section would allow for fluid identification purposes during leakage (column 8, lines 25-27).

#### ***FACSIMILE TRANSMISSION***

Submission of your response by facsimile transmission is encouraged. Group 3600's facsimile number is (571) 273-8300. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's

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hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence not permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check should not be submitting by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

I hereby certify that this correspondence is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on \_\_\_\_\_ (Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_  
\_\_\_\_\_

(Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up

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copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

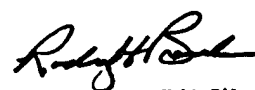
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tara L. Bolton whose telephone number is 571-272-1649. The examiner can normally be reached on Monday-Thursday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles A. Marmor can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

tlb

  
RODNEY H. BONCK  
PRIMARY EXAMINER  
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